IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

OP.No. 23405 of 2000(J)

PETITIONERS:

V.JAYA,
UPPER PRIMARY SCHOOL ASSISTANT,
B.N.V.VOCATIONAL HIGHER SECONDARY SCHOOL,
THIRUVALLAM.P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI
SRI.GEORGE MERCIER

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY SECRETARY,
TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT,
TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM,

3. DISTRICT EDUCATIONAL OFFICER,
THIRUVANANTHAPURAM.

4. THE MANAGER,
B.N.V.VOCATIONAL HIGHER SECONDARY SCHOOL,
THIRUVALLAM.P.O.,
THIRUVANANTHAPURAM.

R1 TO R3 BY GOVERNMENT PLEADER, SRI.T.T.MUHAMOOD
R4 BY ADV. SRI.T.M.ABDUL LATHEEF

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P. NO.23405/2000(J)

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE APPOINTMENT ORDER DATED 26-11-1998 ISSUED BY THE 4TH RESPONDENT.

EXT. P2: COPY OF THE PROCEEDINGS OF THE 2ND RESPONDENT DATED 17-5-2000.

/TRUE COPY/

P.A. TO JUDGE

JP

S.SIRI JAGAN, J.

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O.P. No. 23405 of 2000(J)

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Dated this the 3rd day of December, 2007

JUDGMENT

The petitioner was appointed as Upper Primary School Assistant in the 4th respondent's School on 26.11.1998 for the period from 26.11.1998 to 30.3.1999. The same was approved by Ext.P1. The petitioner was again appointed after the vacation on 1.6.1999 and she continued as UPSA for the whole academic year i.e., till 31.3.2000. Again on 1.6.2000, the petitioner rejoined duty as UPSA in the School. On 26.6.2000 the Director of Public Instruction issued Ext.P2 order purportedly under Rule 12 E(3) read with Rule 16 of Chapter of XXIII of KER directing fixation of staff strength of the School in the year 1999-2000, by reducing one post of UPSA and two posts of HSAs. Consequently petitioner has been treated as surplus staff liable to be retrenched. The petitioner therefore seeks the following reliefs:

"i) issue a writ of mandamus or such other writ, direction or order compelling the respondents to retain the petitioner in service and to pay her salary due from 1-6-1999;

ii) issue a writ of certiorari or such other writ, direction or order

quashing Exhibit P2 as arbitrary, illegal and unconstitutional;

iii) issue such other writ, direction or order as is deemed just and necessary in the facts and circumstances of the case."

2. The petitioner's contention is that Ext.P2 order has been passed only on 17.5.2000 after the academic year was over and she was made to work the whole year without salary and therefore, the petitioner is entitled to salary for the period she worked for that year.

3. The learned Govt. Pleader submits that as is evidenced from Ext.P2 order, the reduction of one post of UPSA was on account of bogus admission on super check. But he does not dispute the fact that Ext.P2 order was passed only on 17.5.2000 i.e. after the academic year was over. Under Rule 15 of Chapter XXIII, if educational officers are satisfied for valid and sufficient reasons to be recorded in writing that the fixation of staff strength was obtained by bogus admission or attendance or by fraud or misrepresentation and the like, the Educational Officers shall be competent to re-fix the staff strength at any time during the course of the year. Going by Rule 15, the reduction in staff

strength on account of bogus admission etc. should be during the course of the year which is not the case here. The learned Government Pleader would argue that Ext.P2 order has been passed under Rule 12 E (3) of Chapter XXIII, which does not fix any time limit as in the case of Rule 15 and therefore, the restriction in Rule 15 has to be confined to orders passed by the educational officers and not to those passed by the Director of Public Instructions under Rule 12 E.

4. I am not inclined to go into that question. Admittedly, the petitioner is not in any way responsible for the bogus admission. She has been duly appointed by the Manager as per the staff fixation order. But for Ext.P2, which was issued after the academic year was over such appointment would have been perfectly in order. Therefore, I am of the opinion that the petitioner cannot be denied salary for the period she worked for the year for no fault of hers.

5. Accordingly, I direct the respondents 2 and 3 to approve the appointment of the petitioner for the period from 1.6.1999 to 31.3.2000 and disburse salary due to the petitioner

for that period. Orders in this regard shall be passed within one month from the date of receipt of a copy of this judgment. If the respondents 1 to 3 so wish, they may proceed against the 4th respondent Manager for recovery of the salary paid to the petitioner.

The original petition is disposed of as above.

Sd/-
S.SIRI JAGAN,
JUDGE

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